APPENDIX

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In The

Supreme Court of the United States

October Term, 1942

OSAGE TRIBE OF INDIANS AND FRED LOOKOUT, Principal Chief and Member of the Osage Tribe of Indians, on Behalf of Said Tribe and the Members Thereof,

Petitioners,

VS.

HAROLD L. ICKES, Secretary of the Interior of the United States, and TOM H. FRALEY, Treasurer of Osage County, Pawhuska, Oklahoma,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the District of Columbia

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APPENDIX TO BRIEF FOR RESPONDENT, TOM H. FRALEY, TREASURER OF OSAGE COUNTY, OKLAHOMA

HISTORY OF OSAGE LEGISLATION

It is unquestionably proper for this Court to consider the legislative history of the Osages along with the allegations of the complaint.

On December 31, 1838, Martin Van Buren, President of the United States, under authority of Congress, patented to the Cherokee Nation of Indians 14,325,125

acres of land, which included that area which later became the Osage Nation in the Indian Territory.

On July 19, 1866, (14 Stat. at L. 799) the United States concluded a treaty with the Cherokee Nation permitting the United States to settle friendly Indians west of the 96th meridian in the Indian Territory.

The Osage Indians had, up to that time, been located on a reservation in Kansas and by various Acts of Congress the sale of the Osage tribal lands in Kansas and their removel to that part of the Indian Territory, which is now Osage County, Oklahoma, was provided for.

Under authority of the Act of March 3, 1883 (22 Stat. at L. 603), providing for the purchase for the Osage Nation from the Cherokee Nation and conveyance "to the United States of America in Trust for the Osages," the Cherokee Nation on June 14, 1883, conveyed to the "United States of America in trust for the use and benefit of the Osage Indians" what is now Osage County, Oklahoma, the consideration being seventy cents an acre.

The Act of Congress of March 3, 1906 (33 Stat. at L. 1048), provided for the surveying, and authorized the President of the United States to allot in severalty, the lands in the Osage Nation and also provided for leasing for oil and created a townsite commission.

The Act of June 28, 1906 (34 Stat. 539), which is generally referred to as the Osage Allotment Act, provided for the making of a roll of the Osage Indians and provided specifically for the allotment of the lands in severalty to the members of the Osage Nation, each

being entitled to four selections of 160 acres each, and a fifth selection of about 15 or 20 acres, the first selection being designated as a homestead and the balance as surplus. The homestead was to remain inalienable and non-taxable for a period of 25 years, except upon the death of the allottee, and the surplus land was to remain non-taxable for a period of three years, except where certificates of compentency were granted. The act also authorized the granting of a certificate of competency by the Secretary of the Interior, upon determining that the applicant was fully competent to transact his own business. The certificate of competency permitted the holder to alienate his surplus lands, but not his homestead allotment.

Sub-section 7 of Section 2 of this Act of Congress reserved the use of the minerals to the Osage Tribe of Indians for a period of *twenty-five years* and provided that the minerals should become the property of the "individual owners of said land at the expiration of said 25 years, unless otherwise provided for by Act of Congress."

There was to be reserved from allotment areas for townsites, schools and cemeteries.

Section 3 of the Act provided for the leasing of lands for oil and gas by the governing body of the Tribe upon approval of the Secretary of the Interior.

Section 4 provided that all funds belonging to the Osage Tribe or that may "become due" to the Osage Tribe shall be held in trust by the United States for 25 years.

The first sub-section of Section 4 provided for the placing of funds on interest and payment of the interest to the members of the Tribe.

The second sub-section provided that the royalty received from the oil and gas and from the sale of townsites shall be placed in the treasury of the United States and paid out to the individual members of the tribe in the same manner as the interest was to be paid out of the trust fund provided for in sub-section 1.

Sub-section 3 provided that from the royalties from oil and gas a sum not to exceed $50,000.00 per annum for a period of ten years should be set aside for schools on the Osage reservation.

Sub-section 4 provided that from the royalties and land rentals a sum not to exceed $30,000.00 per annum should be set aside for agency purposes and as an emergency fund for the use of the Osage Tribe.

Section 5 provided that at the end of the 25 years the minerals, money and all the property held in trust by the United States should become the absolute property of the individual allotted member of the tribe.

Section 10 provided that roadways might be established on all section lines in the Osage Indian reservation without compensation therefor.

Section 11 of the Act authorized the Secretary of the Interior to make rules and regulations to carry into effect the terms of the act.

Section 10 of the Act of April 18, 1912 (34 Stat. at L. 86), increased the amount which could be ex-

pended from the oil and gas royalties for agency purposes and as an emergency fund from $30,000.00 to $40,000.00 annually.

By the Act of May 25, 1918 (40 Stat. at L. 561), the limit on the amount which could be used from the royalties for agency purposes was removed and that matter was left for determination of Congress each year. There was at that time appropriated $60,000.00 from the royalties for agency purposes for that year and the further sum of $25,000.00 for the construction of a building.

By the Osage Act of March 3, 1921 (41 Stat. at L. 1249) the mineral trust period, which was by the terms of the Allotment Act to expire in 25 years, was extended to April 7, 1946.

Section 5 of the Act of March 3, 1921, is the section directly involved in this litigation. We have quoted said section in the brief proper on page 5.

The Act of February 27, 1925 (43 Stat. at L. 1008), regulated the amount which each Indian might draw from his share of the income to the tribe and provided that the surplus be held in the United States Treasury and authorized certain investments from the funds held in the treasury.

The Act of March 2, 1929 (45 Stat. at L. 1478), further extended the mineral trust period to April 8, 1958, and also provided that:

> "The lands, moneys and other properties now or hereafter held in trust or under the supervision of the United States for the Osage Tribe of Indians,

the members thereof, or their heirs and assigns, shall continue subject to such trust and supervision until until January 1, 1959, unless otherwise provided by Act of Congress."

The Act of March 2, 1929, contains this further provision:

"Homestead allotments of Osage Indians not having a certificate of competency shall remain exempt from taxation while the title remains in the original allottee of one-half or more of Osage Indian blood and in his unallotted heirs or devisees of one-half or more of Osage Indian blood until January 1, 1939; provided, that the tax-exempt land of any such Indian allottee, heirs or devisee shall not at any time exceed one hundred and sixty acres."

By the Act of Congress of June 24, 1938 (54 Stat. 1034, c 645), the mineral trust period was further extended to April 8, 1983, and that act further provided that:

"Homestead allotments of Osage Indians not having a certificate of competency shall remain exempt from taxation while the title remains in the original allottee of one-half or more of Osage Indian blood and in his unallotted heirs or devisees of one-half or more of Osage Indian blood until January 1, 1984; Provided, that the tax exempt land of any such Indian allottee, heir or devisee shall not at any time exceed one hundred and sixty acres."

By the general Indian Act of June 20, 1936 (49 Stat. 1542) the lands of all Indians purchased with restricted funds were exempted from taxation, and this act has been held to be applicable to the Osages. It was amended by the Act of May 19, 1937 (50 Stat. 188) so as to provide that exemption from taxation should apply only to the homesteads whether in the county or in the towns or cities.

By Joint Resolution of Congress approved April 25, 1940, it was provided that the gross production tax payable by the Osages to the State of Oklahoma should not exceed 5%, and further provided that one-fifth of said 5% should be paid to Osage County to be used one-half in the construction and maintenance of roads and bridges and the other one-half for the maintenance of the common schools of the county. It was further provided that this gross production tax should be in lieu of all other state and county taxes levied upon the production of oil and gas.

Through National Legislation the Indian Territory became the State of Oklahoma in 1907 and the Osage Nation became Osage County, Oklahoma. A county government was established and free public schools were gradually established throughout the county.

Section 5 of the act of March 31, 1921, was amended by the Osage Act of April 25, 1940, as follows:

"That section 5 of the Osage Act (S. 4039, Public Numbered 360, Sixty-sixth Congress; 41 Stat. 1249) be amended to read as follows:

"Sec. 5. That the State of Oklahoma is authorized from and after the passage of this Act to levy and collect a gross production tax, not to exceed the existing rate, upon all oil and gas produced in Osage County, Oklahoma, except as herein otherwise provided, and all taxes so collected shall be paid and distributed, and shall be in lieu of all other state and county taxes levied upon the production of oil and gas as provided by the laws of Oklahoma. The gross production tax on the royalty interests of the Osage Indians shall be at the rate levied by said State but in no event to exceed 5 per centum and said tax shall be paid by the Secretary of the Inter-

ior, through the proper officer of the Osage Agency, to the State of Oklahoma from the amount received by the Osage Indians from the production of oil and gas to be distributed in like manner as gross production tax under the laws of said State and the Secretary shall pay the tax herein authorized upon the condition and not otherwise that an additional one-fifth of said sum or sums paid by the Secretary in pursuance of this Act shall be delivered over to Osage County, Oklahoma, at the same time or times as the other payment or payments herein provided for are made to said county, one-half thereof to be apportioned to a fund to be used by said county only for the construtcion and maintenance of roads and bridges therein, the other one-half thereof to be used for the maintenance of common schools of said county as provided by law."